

## LABOUR DEPARTMENT

The 15th July, 1977

No. 7192-3Lab-77/18923.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana, is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s Rohtak Delhi Transport (P) Ltd., Rohtak.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, LABOUR COURT, HARYANA,  
ROHTAK

Reference No. 66 of 1973

*between*

-----AJ KUMAR WORKMAN AND THE MANAGEMENT OF M/S ROHTAK DELHI TRANSPORT  
(P) LTD., ROHTAK

## AWARD

By order No. ID/RK/43-C-73/41868-72, dated 22nd October, 1973, the Governor of Haryana, referred the following dispute between the management of M/s. Rohtak Delhi Transport (P) Ltd. Rohtak and workman Shri Raj Kumar to this Court for adjudication, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

“Whether the termination of services of Shri Raj Kumar was justified and in order ? If not : to what relief is he entitled ?

The parties put in their appearance in this Court in response to the usual notices of reference sent to them and filed their pleadings.

The workman alleged,—*vide* notice of demand, dated 29th May, 1973 served by him on the management of M/s Rohtak Delhi Transport (P) Ltd., Rohtak and on the management of Nanda Associates, Kila Road, Rohtak and adopted by him as his claim statement, that he had been in service of the Rohtak Delhi Transport (P) Ltd. Rohtak for the last 10 years as a Petrol Pump Attendant and that his services had been terminated, illegally with effect from 21st May, 1973 on his refusal to resign his job on being asked to do so by them. He stated,—*vide* paragraph No. 3 and 4 of the notice of demand that the petrol pump was being run by Nanda Associates and that his services should have been transferred to that management and that instead of being so done, his services were terminated.

The management concerned pleaded,—*vide* written statement filed by them that Shri Raj Kumar was not a workman within the meaning and definition of this term as given in section 2(s) of the Industrial Disputes Act as he was working as an attendant on a petrol pump owned by them and registered as a shop under the Shops and Commercial Establishments Act, 1958. They stated that the petrol pump was sold before the termination of services of Shri Raj Kumar on 19th May, 1973 by them. They denied the allegations that Shri Raj Kumar was an employee of their Transport Co. and gave out that he was working only as an attendant on their petrol pump since December, 1966.

The workman controverted the pleas of the management concerned and reiterated the allegations made by him in the claim statement,—*vide* rejoinder filed by him, with the result that the following issues were framed on pleas of the parties,—*vide* order, dated 6th November, 1974 :—

- (1) Whether Shri Raj Kumar claimant is not a workman as defined under section 2-S of the Industrial Disputes Act, 1947 for the reasons given in the preliminary objections Nos. 1 and 2 of the written statement ?
- (2) Whether the termination of services of Shri Raj Kumar was justified and in order ? If not, to what relief is he entitled ?

Issue No. 1 was subsequently recast by me as under,—*vide* my order, dated 15th October, 1975 :—

“Whether Shri Raj Kumar claimant was a workman on the date of his termination of his service ?

I heard learned authorised representatives for the parties with reference to the evidence led by them. I decide the issues as under :—

Issue No. 1. The applicant appearing as his own witness deposed that he was an employee of the management concerned on their petrol pump as a petrol pump attendant, for about 7 or 8 years and that his

services having been once terminated he was reinstated in terms of the settlement arrived at between the parties, before the Conciliation Officer and that document Exhibit W-1, dated 3rd June, 1970 was handed over to him. He admitted in cross examination that the petrol pump where upon he used to work for filling in petrol in the vehicles of the management concerned was now owned by Nanda Associates for the last one year. He, further admitted that he did not know the names of the partners of Nanda Associates or as to whether the management concerned of Rohtak Delhi Transport (P) Ltd (hereinafter referred to as private Ltd) had any connection with the former. He admitted that a Shop Inspector used to visit the petrol pump during the period of his employment there and he did not know if the petrol pump was registered under the Shop Act or not or if the Shop Inspector ever checked up the register of the petrol pump. He admitted that he used to sell the lubricants petrol, etc. to other customers as well and that he did not work anywhere except at the petrol pump. The parties admitted that his services were terminated,—vide letter Exhibit W-18, dated 19th May, 1973 by the Private Ltd. as being no longer required for reasons of the business of the petrol pump being sold.

Shri Surjeet Singh, partner of the management concerned appearing as MW-2 gave out that the old management of the private Ltd. ceased to function on 16th May, 1973 and that he and some other persons purchased their (partners of the old management) shares and that the partners of the new management did not purchase the petrol pump which had been transferred in favour of M/s. Nanda Associates. He categorically stated that none of the share holders of the new management of private Ltd. or the private Ltd. had any connection with or any interest in the petrol pump now being run by Nanda Associates. He continued to say that the new management of Private Ltd. Rohtak purchased from the previous management only three buses covered with route permits and that Shri Raj Kumar was at no stage their employee.

It would thus appear that Shri Surjeet Singh partner of the new management of the private Ltd. made a statement against his own interest disclaiming any right in the petrol pump. Even though it is admitted on both sides that the services of Shri Raj Kumar were terminated by the old management of Private Ltd,—vide letter, dated 19th May, 1973 on account of the business of the petrol pump having been sold, yet there is not an iota of evidence on record that the Shareholders of the new management purchased the petrol pump and it on the other hand stands admitted that the petrol pump whereupon Shri Raj Kumar worked is now being run by an entirely different firm of Nanda Associates. These admitted facts well lead to a conclusion, that the old management of private Ltd sold the petrol pump to Nanda Associates and the new management of private Ltd. had also lutely preliminary no connection with or interest in the same at any stage and that Shri Raj Kumar was never their employee. The admitted circumstance that Shri Raj Kumar impleaded Nanda Associates as a party in the notice of demand, dated 19th May, 1973 and actually served a copy of the same on them with a specific allegations that his services should have been transferred to Nanda Associates, lends strength to the conclusion already arrived at by me. There is thus ample evidence on record that the petrol pump had been sold by the old management of private Ltd in favour of Nanda Associates, before the termination of services of Shri Raj Kumar by the former,—vide letter Exhibit W-18, dated 19th May, 1973. and that the new management of the private Ltd had at no stage any connection with or interest in the same.

This brings me to the determination of another important question relevant to the case as to whether the petrol pump admittedly being run by the old management of private Ltd, was a part of their transport business or was an undertaking independent and separate there from being run by them as a business.

The solitary oral statement of Shri Raj Kumar that his wages were being paid from the funds of the private Ltd and his attendance used to be marked in the registers of private Ltd and the wages slips W-3 to W-12 of Shri Raj Kumar relating to the period from 19-5-1973 admittedly issued by the then private Ltd., relied on by him, in absence of any documentary evidence and in view of the admissions of Shri Raj Kumar that a Shop Inspector used to visit the petrol pump during the period of his employment there and that he used to sell the lubricants petrol, etc. to customers other than the private Ltd, do not substantiate his case that the petrol pump was a part of the business of the private Ltd before its sale in favour of Nanda Associates. The admissions of Shri Raj Kumar referred to above taken together with the circumstance that he failed to bring on record the register etc. of the then management of Private Ltd to substantiate his oral statement, on the other hand led to an inference beyond doubt that the petrol pump was a business venture independent and separate from the private Ltd. There is at any rate no evidence on record to show that it was a part of the transport Company being run by the old management of Private Ltd.

There is yet another circumstance leading to the conclusion already arrived at by me. In case the petrol pump would have been a part of the transport business of the old management of Private Ltd it must have been sold along with the transport business in favour of the shareholders of the new management and could have been separate therefrom in a manner that where as the transport business was sold in favour of the new management, it was actually sold in favour of Nanda Associates. All these facts and circumstances thus lead to an irresistible conclusion that the petrol pump was being run by the old management of Private Ltd as an independent business separate from their transport industry and that it was governed by the Shops and Commercial Establishments Act. As being not an industry, I accordingly decide issue No. 1 against the workman and the question of deciding issue No. 2 under the circumstances does not arise.

The result is that Shri Raj Kumar is not entitled to any relief. I accordingly answer the reference while returning the award in these terms.

(MOHAN LAL JAIN)

Dated 8th July, 1977

Presiding Officer,  
Labour Court, Haryana,  
Rohtak.

No. 1441

dated 11th July, 1977

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

MOHAN LAL JAIN

Presiding Officer  
Labour Court Haryana,  
Rohtak.

No. 7195-3Lab-77/18925.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana, is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s Hari Chand-Ghamshiam Dass and Company, Model Town, Yamunanagar.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, LABOUR COURT, HARYANA,  
ROHTAK

Reference No. 16 of 1976

*between*

SHRI SUBHASH MAHAJAN WORKMAN AND THE MANAGEMENT OF M/S HARI CHAND  
GHANSHIAM DASS & COMPANY, MODEL TOWN, YAMUNANAGAR

#### AWARD

By order No. ID/AMB/461-A-75/7519, dated 18th February, 1976 the Governor of Haryana, referred the following dispute between the management of M/s Hari Chand-Ghamshiam Dass & Company, Model Town, Yamunanagar and its workman Shri Subhash Mahajan, to this Court for adjudication, in exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 :—

“Whether the termination of services of Shri Subhash Mahajan was justified and in order ? If not, to what relief is he entitled ?”

The parties put in their appearance in this Court in response to the usual notices of reference sent to them and filed their pleadings.

The workman adopted the notice of demand, dated 19th October, 1975 served by him on the management with the allegations that his services had been terminated by the later illegally with effect from 21st September, 1975 without charge sheeting him and holding an enquiry against him and he was entitled to re-instatement with continuity of service and full back wages, as his claim statement.

The management resisted the demand,—*vide* written statement filed by them with a plea that Shri Subhash Mahajan was not a workman within the meaning of this term as given in section 2(s) of the Industrial Disputes Act and that he had on the other hand been employed by them in a managerial capacity in their Yamunanagar branch and that the reference was bad in law on the ground as also for the reasons that Shri Subhash Mahajan failed to serve on them a demand directly before taking up the matter before the Conciliation Officer. They further pleaded that Shri Subhash Mahajan had misappropriated a large amount while acting as a Manager and that he abandoned his services of his own accord for that reason.

The workman reiterated the allegations made by him in the notice of demand and controverted the pleas of the management,—*vide* rejoinder filed by him and gave out that the management terminated his services on his refusal to accede to their illegal demand of effecting illegal under ground sales of paper supplied to them by the Government only for preparing exercise books for the students.

The following issues were thus framed by me on pleas of the parties,—*vide* my order, dated 23rd September, 1976 :—

(1) Whether Shri Subhash Mahajan was employed with the management as a workman ?

(2) If yes, whether he abandoned his job voluntarily ?

(3) In case of non-proof of issues No. 1 and 2, whether the termination of services of Shri Subhash Mahajan was justified and in order? If not, to what relief is he entitled?

I have heard arguments of learned authorised representatives of the parties with reference to the evidence led by them. I decide the issues as under :—

*Issue No. 1.*—This is an important issue in the case. Shri Subhash Mahajan appearing as his own witness deposed that he joined the services of the management as their representative on 24th November, 1974 on wages of Rs 350 p.m.,—*vide* letter Ex. W-1, dated 2nd December, 1974 whereby he had to transact business and collect the payment from the parties for the management. He gave out that the appointment letter W-1 was signed by Shri Ghansham Dass partner in his presence and that he as representative of the management always took delivery of their goods from the transport Company and did such other acts according to their instructions. He in cross examination admitted his signatures on letter Ex. M-1 bearing his admission in respect of his wages being Rs 500 p.m. and on letter Ex. M-2 and M-3 bearing his admission in respect of his being a Manager. He further admitted that he was Incharge of the establishment of the management at Yamunanagar where 5 or 6 persons worked on contract basis.

The management brought on record the affidavit Ex. M-4 of Shri Subhash Mahajan himself allegedly bearing his description under his own signatures as Manager. Shri Vijay Kumar Gupta partner of the management examined as MW-2 deposed that Shri Subhash Mahajan had been employed by the later as a Manager in their Yamunanagar branch where he alone looked after the work of accounts and administration in his capacity as Manager and that he maintained register of attendance and register of wages. He admitted that only about 5 or 6 workmen on the labour side worked at Yamunanagar. He did not controvert the statement of Shri Subhash Mahajan that the management issued appointment letter Ex. W-1 appointing him as their representative at Yamunanagar under the signatures of Shri Ghansham Dass and letters Ex. W-4 to Ex. W-6 and telegram Ex. W-2 and shall thus be deemed to have admitted the same.

Having broadly stated the evidence of the parties as found disclosed from the record including the admitted documents, I consider it necessary to state in extenso the definition of workman as given in section 2(s) of the Industrial Disputes Act as under :—

“Workman” means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute, includes any such person who had been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person.

- (i) \* \* \* \*
- (ii) \* \* \* \*
- (iii) Who is employed mainly in a managerial or administrative capacity or
- (iv) \* \* \* \*

This brings as now to the determination of the question as to whether Shri Subhash Mahajan falls within the definition of workman as reproduced above or that he is proved to have been employed and acted mainly in a managerial capacity. As already found, he was appointed as representative—*vide* appointment letter Ex. W-1 with a specific avowment that he was fully authorised to transact the business and collect the payment from the parties by cheques or bank drafts or pay orders on behalf of the management.

There is no mention in this letter of his having ever being appointed as a Manager. Shri Vijay Kumar Gupta partner examined as MW-2 admitted that Shri Subhash Mahajana alone looked after the work of accounts and maintained register of attendance and register of wages. He is not found to have been designated as Manager in the telegram W-2 undisputably sent by the management to him terminating his services or in the letters Exhibit W-4 and W-5 and W-6 undisputably sent to him by Shri Rajinder Jain General Manager of the management from their head office at Saharanpur. Latter Exhibit W-6 relates to instructions given to Shri Subash Mahajan by Shri Rajinder Jain to proceed for realising advance amount of exercise books, to A.S. Jain College Ambala City, Sohan Lal College of Education Ambala City, D.A.V. College Ambala City, Dev College Ambala City, S.A. Jain High School Ambala, Government High School Kesri and some such other institutions. Letters Exhibit W-4 and W-1 are in respect of the direction made to Shri Subhash Mahajan to get released the goods of the management from a transport Company.

It would thus appear from the aforesaid documents Exhibit W-1 to W-6 consisting of the appointment letter and other letters, that Shri Subash Mahajan was actually appointed by the management as their representative

for transacting business and collecting payments from the parties, and that he actually did clerical work by way of maintaining attendance register and register of payment of wages and did such other miscellaneous jobs of getting the goods of the management released from transport Company and receiving payment on their behalf. All these duties admittedly discharged by him well bring his case within the definition of workman as reproduced above as he is proved to have been employed for doing clerical or other unskilled work. The mere circumstance that he described himself as Manager in the affidavit Exhibit M-1 submitted by him before the department of Public Instruction Haryana and in the letters Exhibit M-2 and M-3 sent by him to that department and Shri Ghansiam Dass partner respectively does not take away the effect of the documents Exhibit W-1 to W-6 referred to above and the admission of Shri Vijay Kumar Gupta establishing his employment as representative of the management for transacting clerical and other manual work, and considered from any angle, there is no evidence worth the name on record supporting the plea of the management that he was employed in a managerial capacity.

Even assuming that Shri Subhash Mahajan discharged some duties of a Manager, this by itself would not be sufficient to take his case out of the definition of a workman inasmuch as the management in order to prove their plea of his being not a workman, must prove that he was employed mainly in a Managerial capacity. The emphasis thus has to be placed on the words "mainly" as used in clause (iii) appended to section 2(s) of the Industrial Disputes Act and there is not a word on the record either in the pleas or evidence of the management showing the employment or work of Shri Subhash Mahajan mainly in a Managerial capacity. The admitted circumstance that one Shri Rajinder Jain has the General Manager of the management at their Saharanpur head office further refutes the suggestion that Shri Subhash Mahajan was employed or worked mainly in a Managerial capacity.

I am thus convinced on consideration of the evidence led by the parties and referred to above that Shri Subhash Mahajan was employed as a workman. I, therefore, hold and decide this issue in his favour.

*Issue No. 2 and 3.*—It was frankly conceded by Shri W.C. Sharma before me that in case of finding on issue No. 1 in favour of the workman he was entitled to reinstatement with a finding of termination of his services being illegal and that the management had failed to prove that he abandoned his job of his own accord. I, thus decide both these issues against the management and hold that the termination of services of Shri Subhash Mahajan was not justified and that he is entitled to reinstatement with full back wages and continuity of service.

I, accordingly answer the reference while returning the award in these terms.

Dated 6th July, 1977.

MOHAN LAL JAIN,  
Presiding Officer,  
Labour Court, Haryana,  
Rohtak.

No. 1440, dated 11th July, 1977

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

MOHAN LAL JAIN,  
Presiding Officer,  
Labour Court, Haryana,  
Rohtak.

P. P. CAPRIHAN,  
Financial Commissioner & Secy.

राजस्व विभाग

युद्ध जागीर

दिनांक 18-जुलाई, 1977

क्रमांक 924-ज(II)-77/17609.—श्री फतेह सिंह, पुत्र श्री भून्डू, गांव कानोंदा, तहसील झज्जर, जिला रोहतक की दिनांक 24 अप्रैल, 1972 को हुई मृत्यु के परिणामस्वरूप हरियाणा के राज्यपाल, पूर्वी पंजाब युद्ध पुरस्कार अधिनियम, 1948 (जैसा कि उसे हरियाणा राज्य में अपनाया गया है और उस में आज तक संशोधन किया गया है) की धारा 4 एवं 2(ए) (1ए) तथा 3(1ए) के अधीन प्रदान की गई शक्तियों को प्रयोग करते हुए सहर्ष आदेश देते हैं, कि श्री फतेह सिंह को मुब्लिक 150 रुपये वार्षिक की जागीर जो उसे हरियाणा सरकार की अधिसूचना क्रमांक 7230-र(III)-69/2247, दिनांक 30 जनवरी, 1970 तथा अधिसूचना क्रमांक 5041-आर-III-70/29505, दिनांक 9 दिसम्बर, 1970 द्वारा मन्जूर की गई थी अब उसकी विधवा श्रीमती रिसालो देवी के नाम खरीफ, 1972 से 150 रु० वार्षिक की दर से सनद में दी गई शर्तों के अन्तर्गत तबदील की जाती है।